IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Watson	Examiner:	Hamza
Serial No.:	10/029,173	Group Art Unit:	2155
Filed:	Dec. 28, 2001	Docket No.:	20009.0063US01
			(BS01-325)
Title:	System to Remotely Manage and Audit Set Top Box Resources		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In conjunction with a Notice of Appeal, reconsideration and allowance of the application is respectfully requested for at least the following reasons. The Notice of Appeal is being filed in response to a final Office Action mailed on February 28, 2007, as well as an Advisory Action mailed on May 9, 2007.

1. Medvinsky fails to show something other than a Set Top Box (STB) doing a comparison of first item of information related to parameter settings to second item of information related to parameter settings expected to be associated with the STB

A careful reading of claim 6 of the present application reveals that a comparison of the first item of information to the second item of information is performed at a location remote from the STB. Medvinsky fails to show any such comparison being performed remotely from the STB.

The Advisory Action argues that Medvinsky must be doing a comparison to a baseline to determine that something has been altered. However, the flaw in this conclusion is that it ignores where the comparison is taking place. In Medvinsky, the head end that is remote from the STB sends a test signature group to get the process started. However, to the extent any comparison is done, it is done at the STB itself in order to determine an error that indicates that the STB has been hacked and should be deactivated. Thus, performing a comparison at the STB is NOT performing a comparison at a location remote from the STB. Furthermore, even if a comparison is being done at the STB to detect the error, it is not a comparison of first item of information and second item of information as claimed.

Furthermore, the service provider concluding whether an STB has been hacked based on whether the error indication is received from the STB is not a comparison of first item of information related to parameter settings to second item of information related to expected parameter settings. It is merely detecting whether the error indication message is received or not and there is no comparison by the head end of such first and second item of information as claimed.

Therefore, claim 6 and its dependents are allowable for at least these reasons.

A careful reading of claim 25 of the present application reveals that a comparison of first item of information to second item of information is performed by a computer in communication with the STB rather than the STB itself. As discussed above, Medvinsky fails to show such a comparison of first item of information to second item of information at a location or computer other than at the STB itself in order to determining the error condition that is representative of the STB being hacked. As further discussed above, the service provider of Medvinsky concluding that the STB has been hacked or not on the basis of whether the error message has

been received is not such a comparison of the first and second item of information as claimed since it is merely detection of whether a particular message is received or not.

Therefore, claim 25 and its dependents are allowable for at least these reasons.

2.   Medvinsky fails to show that something other than an STB sends an instruction to the STB based on the comparison

A careful reading of claim 6 reveals that an instruction to change parameter settings on the basis of the comparison is sent to the STB from the location that is remote from the STB. Medvinsky fails to show any such instruction being sent to the STB on the basis of the comparison.

The Advisory Action argues that Medvinsky must be sending an instruction in order to stop the operation of the STB. However, the flaw in this conclusion is that it ignores where the instruction that is based on a comparison is being sent from. In Medvinsky, the test signature group and/or Trojan Horse from the head end is not being sent on the basis of a comparison as claimed but is being sent whenever the head end chooses to do so. So, the test signature and Trojan Horse are not an instruction on the basis of the comparison as claimed. Medvinsky does disclose that the STB may stop operation as a result of the STB determining for itself whether there is an error as a result of receiving the test signature and then allowing the Trojan Horse to activate to stop operation. However, to the extent the STB allowing the Trojan Horse to activate is an instruction from the STB itself, then this is NOT an instruction to change a parameter setting being sent from a location remote from the STB. Furthermore, to the extent the Trojan Horse may be considered as an instruction, it was not sent by the head on the basis of a comparison that has been done by the head end and therefore cannot be an instruction as claimed. Thus, Medvinsky does not disclose sending an instruction from the location remote from the STB to the STB on the basis of a comparison of first and second item of information in order to stop operation.

Therefore, claim 6 and its dependents are allowable for these additional reasons.

3.   Medvinsky fails to disclose that a second item of information used in the comparison is from a database spaced from the STB

Claim 25 recites that the second item of information that is used in the comparison to the first item of information is from a database spaced from the STB. Medvinsky fails to disclose these recitations.

The Advisory Action makes no attempt to directly address this point. Applicants assert that to the extent the STB of Medvinsky is making some comparison of whether it has been hacked, this comparison is being performed at the STB based on the error detection from the test signature at the STB. This test signature implementation at the STB in order to detect an error is not a comparison involving the second item of information from the spaced database by a computer other than the STB and therefore cannot be the second item of information from a database spaced from the STB as claimed. Furthermore, the service provider concluding whether the STB has been hacked on the basis of whether the error message is received is not involving a comparison of information from a database spaced from the STB but is merely detection of whether the error message is received or not.

Therefore, claim 25 and its dependents are allowable for at these additional reasons.

Conclusion

Applicants assert that claims 6-8, 23, 25, and 27-32 are in condition for allowance. Applicants request that the §§102 and 103 rejections to these claims be withdrawn based on the remarks above and further request that an indication of allowable subject matter be provided. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due beyond the fee for the Notice of Appeal. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

Date: May __, 2007

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Jeramie J. Keys
Reg. No. 42,724

Withers & Keys, LLC

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P.O. Box 71355
Marietta, GA 30007-1355
(404) 849-2093

Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

20009.0063US01 (BS01-325)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature_____

Typed or printed
name _____

Application Number	Filed
10/029,173	December 28, 2001

First Named Inventor

Watson et al.

Art Unit	Examiner
2155	Hamza, F.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
          Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
    See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
    (Form PTO/SB/96)

☑ attorney or agent of record.   42,724
    Registration number _____.

☐ attorney or agent acting under 37 CFR 1.34.

    Registration number if acting under 37 CFR 1.34 _____

/Jeramie J. Keys/

Signature

Jeramie J. Keys

Typed or printed name

678-565-4748

Telephone number

May 31, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐   *Total of _____ forms are submitted.